

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2732

PETITION OF M. WAJEED KHAN, M.D.

OPINION OF THE BOARD
(Opinion Adopted May 20, 2009)
(Effective Date of Opinion: May 29, 2009)

Case No. S-2732 is an application for a special exception, pursuant to Section 59-G-2.38 of the Zoning Ordinance, to permit a nonresident professional office. The Hearing Examiner for Montgomery County held a hearing on the application on September 22, 2008 and January 27, 2009 and issued a Report and Recommendation for approval of the special exception on April 27, 2009.

The subject property is Tax Parcel P241, located at 12014 Georgia Avenue, Wheaton, Maryland, 20902, in the R-60 Zone.

Decision of the Board: Special Exception **Granted** Subject
To Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on May 20, 2009. After careful consideration and review of the record, the Board adopts the Report and Recommendation, with a revision to proposed Condition 1(i) and deletion of proposed Condition 4, and grants the special exception subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits filed on his behalf during these proceedings, as well as the representations of his counsel and the testimony of his site-planner witness to the extent that their representations and testimony are identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board. In particular:
 - a. No more than two physicians shall be on site at a time.
 - b. No more than two medical assistants shall be on site at a time.

- c. Office hours shall be restricted to the following times: 9:00 a.m. to 5 p.m. Mondays, Wednesdays, and Fridays; 9:00 a.m. to 7:00 p.m. Tuesdays and Thursdays; 10 a.m. to 2:00 p.m. Saturdays.
 - d. Medical-office use shall be limited to the first floor of the building and basement use shall be limited to storage.
 - e. No more than one exterior sign, no larger than two square feet, is permitted. The sign shall be mounted on the building at the first-floor level. The sign shall have no illumination.
 - f. Petitioner shall implement and maintain the landscape plan depicted in exhibit 40(b), including erection of a six-foot high board-on-board fence along the southern property line.
 - g. Petitioner shall construct a handicapped-usable ramp for movement across Grandview Avenue at its intersection with Cory Avenue as depicted on exhibit 40(a).
 - h. Construction of the building and other on-site improvements must conform to exhibits 29(b) and 40(a).
 - i. Lighting for the parking lot shall conform to the lighting plan, ex. 42. The parking lot light will be lit only between dusk and half an hour after office hours, *i.e.*, until 7:30 p.m. on Tuesdays and Thursdays and 5:30 p.m. on other weekdays.
 - j. No more than four outdoor building lights shall be lit at any time later than half an hour after office hours. This condition does not preclude additional lighting when triggered by motion detectors. Light fixtures on the southern side of the building must be calibrated not to emanate more than 0.1 foot candles along the side and rear lot lines.
2. The co-owner of the property, Bebe Z. Khan, shall file a declaration with the Board agreeing to be bound by all conditions imposed by the Board.
 3. Petitioner shall obtain approval of a preliminary plan of subdivision.
 4. The final sediment control plan must be consistent with the limits of disturbance as shown on the approved forest conservation exemption dated August 20, 2008.
 5. Petitioner must obtain and satisfy the requirements of all licenses, permits, and approvals necessary to implement the special exception as granted, including but not limited to building permits, use and occupancy permits, and permits necessary to construct the Grandview Avenue ramp.
 6. Petitioner shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life, safety, and handicap accessibility requirements), regulations, directives, and other governmental requirements.

On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd, in agreement, and with Catherine G. Titus, Chair, in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of May, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.